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7 Attorneys for Plaintiffs

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF WASHINGTON

10 ECHELON, LLC, and LEE &
11 HAYES, PLLC,

12 Plaintiffs,

13 vs.

14 UNITED STATES DEPARTMENT
15 OF THE ARMY,

16 Defendant.

NO. CV-12-391-RHW

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF

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20 Comes now the Plaintiffs, Echelon, LLC, and Lee & Hayes, PLLC, by and
21 through its attorneys, Lee & Hayes, PLLC, and complain and allege as follows:

22 **I. PARTIES**

23 1.1 Echelon, LLC ("Echelon") is a limited liability company organized
24 under the laws of the Coeur d'Alene Tribe of Indians, and formerly did business as
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COMPLAINT FOR DECLARATORY
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1 Berg Integrated Systems. The sole member of Echelon is the Coeur d'Alene Tribe
2 of Indians.

3 1.2 Lee & Hayes, PLLC ("L&H") is a professional limited liability
4 company organized under the laws of the State of Washington.

5 1.3 Together, Echelon and L&H are the requesting parties under the
6 Freedom of Information Act ("FOIA").¹
7

8 1.4 The United States Department of the Army ("Army") is an agency
9 within the meaning of 5 U.S.C. § 552(f)(1).

10 II. JURISDICTION

11 2.1 This Court has jurisdiction over this action pursuant to 5 U.S.C. §
12 552(a)(4)(B) and 28 U.S.C. § 1391(e).

13 2.2 Venue is proper in this Court pursuant to 5 U.S.C. § 552(a)(4)(B) and
14 28 U.S.C. § 1391(e).

15 III. FACTS

16 3.1 This is an action under FOIA, 5 U.S.C. § 552 *et seq.*, challenging the
17 Army's failure to respond to a request for public records.
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19 3.2 Echelon, Dunlop GRG Holdings, Ltd. And Trelleborg Coated
20 Systems, U.S., Inc. are presently involved in a commercial dispute before the
21 American Arbitration Association ("Arbitration"). Issues in the Arbitration relate
22 to a 2007 contract between Echelon and the U.S. Army – TACOM ("Army") to
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24 ¹ The FOIA request was initially made on behalf of Echelon by Lukins & Annis, P.S., of Spokane
25 Washington through attorneys Bryce Wilcox and Vanessa Waldref. Wilcox and Waldref are now attorneys
26 with L&H in Spokane, Washington.

1 manufacture 210,000 Gallon flexible fuel tanks ("Tanks"). There were numerous
2 issues with the Tanks that resulted in the Army reporting quality problems and
3 rejecting Tanks. This resulted in the Army ordering far fewer Tanks than
4 contemplated by the parties under the Tank contract. Under the arbitration Panel's
5 January 12, 2012, Scheduling Order, the Arbitration hearing is set for November
6 2012, and the deposition cut off is July 20, 2012.

8 3.3 Pursuant to FOIA, by letter dated November 21, 2011, Echelon,
9 through its counsel, requested certain documents related to the W56HZV-07-D-
10 0269 contract between Echelon and the Army that are at issue in the Arbitration.
11 Echelon's request for documents was in conformance with the requirements for
12 such FOIA requests.

14 3.4 The Army failed to provide any response whatsoever within twenty
15 days of the FOIA request.

16 3.5 On January 10, 2012, Echelon's counsel sent Shelley Pantalone, the
17 Army's FOIA officer at TACOM, a follow up email regarding the request, and
18 provided a copy of the electronic confirmation that established that the Army
19 received the original FOIA request dated November 21, 2011.

21 3.6 On January 19, 2012, Echelon's counsel sent Ms. Pantalone another
22 follow up email, inquiring about the status of the FOIA request.

23 3.7 On January 30, 2012, Ms. Pantalone responded to Echelon's email,
24 stating that "Your request was sent to the contracting area for a search of their files
25
26

1 for the records you are requesting. I have not gotten a response from them." The
2 email indicated that the FOIA Request had an assigned number, #12-0064.

3 3.8 Echelon's counsel sent an additional email and a letter dated February
4 22, 2012, to Ms. Pantalone regarding the original FOIA request and inquiring
5 about the status of the request.

6 3.9 On March 8, 2012, Echelon's counsel sent another letter to Ms.
7 Pantalone at the TACOM FOIA Office, explaining that Echelon had received no
8 response from the FOIA Office regarding the FOIA request and indicated its intent
9 to pursue litigation to compel compliance with the time limits under the FOIA.
10

11 3.10 The morning of March 9, 2012, Ms. Pantalone called Echelon's
12 counsel regarding Echelon's FOIA request, and Ms. Pantalone reported that
13 Echelon should receive responsive documents within a few days.

14 3.11 Later on March 9, 2012, Ms. Pantalone called Echelon's counsel
15 again, and reported that TACOM had transferred control of Echelon's contract to
16 the Army's Defense Logistics Agency ("DLA") Land and Maritime "at some point
17 in 2009." Ms. Pantalone stated that she had transferred the FOIA request file to the
18 DLA Land and Maritime FOIA Office, who would begin the search for documents.
19

20 3.12 Also on March 9, 2012, after these communications with Ms.
21 Pantalone, Echelon's counsel received a letter from the DLA Land and Maritime
22 FOIA Officer Peggy L. Pasquinely, advising that the DLA FOIA office received
23 Echelon's FOIA request. The letter stated that the DLA assigned the FOIA request
24 case number DSCC-12-CFOI-02080, that the request had been assigned to the
25
26

1 Complex queue, and that the requests were processed on a "First-In, First-Out"
2 queue basis.

3 3.13 On March 13, 2012, four months after the filing of the FOIA request,
4 Echelon's counsel received a letter from Ms. Pantalone, confirming receipt of the
5 FOIA request on November 22, 2011, and advising that the matter had been
6 referred to DLA Land and Maritime.
7

8 3.14 On March 19, 2012, Echelon's counsel was told by an Army contract
9 specialist at DLA that he had just sent a pack of documents to the DLA FOIA
10 Officer for review over the next few days.

11 3.15 DLA FOIA Officer Peggy Pasquinely, in a letter dated March 23,
12 2012, indicated that 1,700 records had been located, and that the time to research,
13 copy and review these records would be "immense" and would likely cost in
14 excess of \$15,000. Ms. Pasquinely also indicated that it would take "many
15 months" to produce the requested documents, even though the office apparently
16 was able to locate the requested records within 14 days. The letter also informed
17 Echelon's counsel that Ms. Pasquinely had decided to place Echelon's request on
18 hold and suggested that Echelon's counsel refine the request. No basis was
19 provided to delay the FOIA response, nor any other reason provided for the lack of
20 production.
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23 3.16 On March 28, 2012, Echelon's counsel responded to the March 9 and
24 March 23, 2012 letters, explaining that Echelon's FOIA Request should be
25 designated as "Expedited" because it had been pending since November 2011 and
26

1 the timely production of the requested documents were critical to Echelon's
2 pending Arbitration. The letter also indicated an order of priority for the
3 documents produced, to assist in the sequencing of document production, and
4 authorized expenditure of up to \$5,000.

5
6 3.17 On April 5, 2012, Echelon's counsel received a letter from Ms.
7 Pasquinely, in which she asserted that Echelon's FOIA claim was "moot" and that
8 Echelon's request would be placed in the "Complex" queue only after it had been
9 perfected. Yet the letter also stated the request would be processed in the Complex
10 queue until \$5,000 had been spent.

11
12 3.18 On April 20, 2012, Echelon sent a letter requesting clarification
13 regarding whether the DLA FOIA office was processing Echelon's long-pending
14 request. Echelon's counsel also provided additional clarification regarding their
15 FOIA request to expedite the production process, and limited their FOIA request.

16
17 3.19 On April 24, 2012, DLA FOIA Officer Peggy Pasquinely confirmed
18 receipt of the narrowed FOIA request, and confirmed her office was "searching the
19 files" and documents would be released "as they become available."

20
21 3.20 On April 25, 2012, when Echelon still had not received a single
22 document from its FOIA request, Echelon's counsel submitted a document
23 subpoena to the TACOM-LCMC Legal Office issued by the AAA Panel in the
24 Arbitration, which also requested documents related to the W56HZV-07-D-0269
25 contract between Echelon and the Army that are critically important to Echelon's
26 pending Arbitration. The letter explained that Echelon's counsel had been working

1 with DLA FOIA Officer Peggy Pasquinely on a related FOIA request. Echelon's
2 counsel suggested that all parties work together to avoid duplication of efforts.

3 3.21 On May 10, 2012, Echelon's counsel spoke with Steven Whittington
4 of the TACOM Legal Office, who reported that he had forwarded Echelon's
5 document subpoena to the Office of the Judge Advocate General (OTJAG) for an
6 additional level of review, and that OTJAG possessed the authority to access
7 information within the control of TACOM as well as DLA. Mr. Whittington also
8 suggested that Echelon's counsel alert the DLA FOIA staff working on the related
9 FOIA request of the document subpoena and OTJAG review. To facilitate
10 cooperation and timely production of its requested documents, Echelon's counsel
11 informed Mr. Whittington of TACOM Legal Office of these developments in a
12 letter dated May 15, 2012.
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15 3.22 On May 30, 2012, Mr. Whittington advised Echelon's counsel that the
16 Army would not honor the AAA document Subpoena, as it did not qualify as a
17 "judicial or quasi-judicial" proceeding under federal law.
18

19 3.23 Echelon's counsel followed up again on the pending FOIA request on
20 June 7, 2012.

21 3.24 To date, the Army has failed and/or refused to respond to Echelon's
22 FOIA request, and still has not provided any requested documents. As a result,
23 Echelon and its counsel have exhausted the applicable administrative remedies.
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4.1 Plaintiffs incorporate and re-allege the previous paragraphs as if set forth herein.

Violation of the Freedom of Information Act

4.1 Plaintiffs incorporate and re-allege the previous paragraphs as if set forth herein.

4.3 The Army failed to provide the documents pursuant to Echelon's proper request for documents under FOIA.

4.4 The Army's failure to comply with its duties under FOIA, 5 U.S.C. § 522 is not in accordance with law and constitutes final agency action unlawfully withheld or unreasonably delayed.

4.5 Plaintiffs incorporate and re-allege the previous paragraphs as if set forth herein.

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Award of Attorneys' Fees and Costs

4.7 Plaintiffs incorporate and re-allege the previous paragraphs as if set forth herein.

4.8 Plaintiffs are entitled to recover the attorneys' fees and costs associated with this action as a result of the Army's failure to comply with its duties under FOIA pursuant to 32 C.F.R. § 518.18(d)(1) (2006).

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

1. Declare that the Army's failure to provide Echelon and its counsel with all of the information requested in their November 21, 2011, FOIA request letter violated FOIA;
2. Order the Army to immediately provide Plaintiffs with copies of all of the requested documents without charge;
3. Grant Plaintiffs such other injunctive, declaratory and monetary relief as this Court deems just and proper;
4. Retain jurisdiction over this case to ensure compliance with this Court's decree; and
5. Award Plaintiffs their reasonable attorneys' fees and costs incurred in pursuing this matter.

1 DATED this 11th day of June, 2012.

2 LEE & HAYES PLLC

3
4 By s/ Bryce J. Wilcox
5 BRYCE J. WILCOX, WSBA #21728

6 By s/ Vanessa R. Waldref
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of June, 2012, I filed the foregoing with the Clerk of the Court using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that I caused to be dispatched a copy of the foregoing via registered or certified United States Postal Service mail, postage prepaid to the following:

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AND INJUNCTIVE RELIEF

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